

(i) For each such finding, the decisional document shall list the specific source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

(ii) If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the DRB), the decisional document shall set forth the conflicting evidence, and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the DRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption.

(3) If the DRB disagrees with the position of the applicant on an issue of equity, the following guidance applies in addition to the guidance in § 865.112(i) (1) and (2):

(i) The DRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant).

(ii) The DRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant) are not relevant to the applicant's case.

(iii) The DRB may reject an applicant's position by explaining why the applicant's issue is not a matter upon which the DRB grants a change in discharge as a matter of equity. When the applicant indicates that the issue is to be considered in conjunction with other specified issues, the explanation will address all such issues.

(iv) The DRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the DRB agreed with the applicant's position.

(v) If the applicant takes the position that the discharge should be changed as a matter of equity because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the DRB may respond that it will presume the validity of the record in the absence of such corrective action. However, the DRB will consider whether it should exercise its equitable powers to change the discharge on the basis of the alleged error. If it declines to do so, the DRB shall explain why the applicant's position did not provide a sufficient basis for the change in the discharge requested by the applicant.

(4) When the DRB concludes that aggravating factors outweigh mitigating factors, the DRB must set forth reasons such as the seriousness of the offense, specific circumstances surrounding the offense, number of offenses, lack of mitigating circumstances, or similar factors. The DRB is not required, however, to explain why it relied on any such factors unless the applicability or weight of such factors are expressly raised as an issue by the applicant.

(5) If the applicant has not submitted any issues and the DRB has not otherwise relied upon an issue of equity for a change in discharge, the decisional document shall contain a statement to that effect, and shall note that the major factors upon which the discharge was based are set forth in the service record portion of the decisional document.

§ 865.113 Recommendations by the Director of the Personnel Council and Secretarial Review Authority.

(a) The Director of the Personnel Council may forward cases for consideration by the Secretarial Reviewing Authority (SRA) under rules established by the Secretary of the Air Force.

(b) The following categories of discharge review requests are subject to

the review of the Secretary of the Air Force or the Secretary's designee.

(1) Cases in which a minority of the DRB panel requests their submitted opinions be forwarded for consideration (refer to § 865.110(h)).

(2) Cases when required in order to provide information to the Secretary on specific aspects of the discharge review function which are of interest to the Secretary.

(3) Any case which the Director, Air Force Personnel Council believes is of significant interest to the Secretary.

(c) The Secretarial Reviewing Authority is the Secretary of the Air Force or the official to whom he has delegated this authority. The SRA may review the types of cases described above before issuance of the final notification of a decision. Those cases forwarded for review by the SRA shall be considered under the standards set forth in § 865.121 and DOD Directive 1332.28.

(d) There is no requirement that the Director of the Personnel Council submit a recommendation when a case is forwarded to the SRA. If a recommendation is submitted, however, it should be in accordance with the guidelines described below.

(e) Format for Recommendation. If a recommendation is provided, it shall contain the Director's views whether there should be a change in the character of or reason for discharge (or both). If the Director recommends such a change, the particular change to be made shall be specified. The recommendation shall set forth the Director's position on decisional issues submitted by the applicant in accordance with the following:

(1) Adoption of the DRB's Decisional document. The recommendation may state that the Director has adopted the decisional document prepared by the majority. The Director shall ensure that the decisional document meets the requirements of this regulation.

(2) Adoption of the Specific Statements From the Majority. If the Director adopts the views of the majority only in part, the recommendation shall cite the specific matter adopted from the majority. If the Director modifies a statement submitted by the majority,

the recommendation shall set forth the modification.

(3) Response to Issues Not Included in Matter Adopted From the Majority. The recommendation shall set forth the following if not adopted in whole or in part from the majority:

(i) The issues on which the Director's recommendation is based. Each such decisional issue shall be addressed by the Director in accordance with § 865.112 of this subpart.

(ii) The Director's response to items submitted as issues by the applicant under § 865.111 of this subpart.

(iii) Reasons for rejecting the conclusions of the majority with respect to decisional issues which, if resolved in the applicant's favor, would have resulted in greater relief for the applicant than that afforded by the Director's recommendation. Each issue shall be addressed in accordance with § 865.112 of this subpart.

(f) Copies of the proposed decisional document on cases that have been forwarded to the SRA (except for cases reviewed on the DRB's own motion without the participation of the applicant or the applicant's counsel) shall be provided to the applicant and counsel or representative, if any. The document will include the Director's recommendation to the SRA, if any. Classified information shall be summarized.

(g) The applicant shall be provided with a reasonable period of time, but not less than 25 days, to submit a rebuttal to the SRA. An issue in rebuttal consists of a clear and specific statement by the applicant in support of or in opposition to the statements of the DRB or Director on decisional issues and other clear and specific issues that were submitted by the applicant. The rebuttal shall be based solely on matters in the record when the DRB closed the case for deliberation or in the Director's recommendation.

(h) *Review of the Decisional document.* If corrections in the decisional document are required, the decisional document shall be returned to the DRB for corrective action. The corrected decisional document shall be sent to the applicant and counsel or representative, if any, but a further opportunity for rebuttal is not required unless the

correction produces a different result or includes a substantial change in the discussion by the DRB or Director of the issues raised by the majority or the applicant.

(i) *The Addendum of the SRA.* The decision of the SRA shall be in writing and shall be appended as an addendum to the decisional document.

(1) *The SRA's Decision.* The addendum shall set forth the SRA's decision whether there will be a change in the character of or reason for discharge (or both); if the SRA concludes that a change is warranted, the particular change to be made shall be specified. If the SRA adopts the decision recommended by the DRB or the Director, the decisional document shall contain a reference to the matter adopted.

(2) *Discussion of Issues.* In support of the SRA's decision, the addendum shall set forth the SRA's position on decisional issues, items submitted by an applicant and issues raised by the DRB and the Director. The addendum will state that:

(i) The SRA has adopted the Director's recommendation.

(ii) The SRA has adopted the proposed decisional document prepared by the DRB.

(iii) If the SRA adopts the views of the DRB or the Director only in part, the addendum shall cite the specific statements adopted. If the SRA modifies a statement submitted by the DRB or the Director, the addendum shall set forth the modification.

(3) *Response to Issues Not Included in Master Adopted From the DRB or the Director.* The addendum shall set forth the following if not adopted in whole or in part from the DRB or the Director:

(i) A list of the issues on which the SRA's decision is based. Each such decisional issue shall be addressed by the SRA. This includes reasons for rejecting the conclusion of the DRB or the Director with respect to decisional issues which, if resolved in the applicant's favor, would have resulted in change to the discharge more favorable to the applicant than that afforded by the SRA's decision.

(ii) The SRA's response to items submitted as issues by the applicant will be in accordance with § 865.111 of this subpart.

(4) *Response to Rebuttal.* (i) If the SRA grants the full change in discharge requested by the applicant (or a more favorable change), that fact shall be noted, the decisional document shall be addressed accordingly, and no further response to the rebuttal is required.

(ii) If the SRA does not grant the full change in discharge requested by the applicant (or a more favorable change), the addendum shall list each issue in rebuttal submitted by an applicant and shall set forth the response of the SRA under the following:

(A) If the SRA rejects an issue in rebuttal, the SRA may respond in accordance with the principles in § 865.112 of this subpart.

(B) If the matter adopted by the SRA provides a basis for the SRA's rejection of the rebuttal material, the SRA may note that fact and cite the specific matter adopted that responds to the issue in rebuttal.

(C) If the matter submitted by the applicant does not meet the requirements for rebuttal material in paragraph (g) of this section, that fact shall be noted.

(j) *Index Entries.* Appropriate index entries shall be prepared for the SRA's actions for matters that are not adopted from the DRB's proposed decisional document.

§ 865.114 Decisional document.

(a) A decisional document shall be prepared for each review conducted by the DRB.

(b) At a minimum, the decisional document shall contain:

(1) The date, character of, and reason for discharge or dismissal certificate issued to the applicant upon separation from the military service, including the specific regulatory authority under which the discharge or dismissal certificate was issued.

(2) The circumstances and character of the applicant's service as extracted from military records and information provided by other government authority or the applicant, such as, but not limited to:

(i) Date of enlistment (YYMMDD).

(ii) Period of enlistment.

(iii) Age at enlistment.

(iv) Length of service.

(v) Periods of unauthorized absence.